

FAIR HOUSING ISSUES IN A DOWN ECONOMY

by King County Office of Civil Rights

In these tough economic times, local non-profit social service providers have been busier than ever. One such agency that helps tenants stay in their homes recently contacted the King County Office of Civil Rights to ask if the fair housing laws prevent a landlord from waiving late fees owed by a tenant.

The issue came up when the non-profit agency agreed to help a tenant avoid eviction by paying money toward the tenant's overdue rent. When the agency contacted the landlord, the landlord was willing to accept the agency's rental assistance funds and allow the tenant to remain. However, the landlord felt that she could not waive the late fees – she was afraid it would violate fair housing laws because she would be treating the tenants differently.

While consistency is important, good customer service may mean granting an exception. Let's assume that a housing provider has a policy of serving a 3-Day to Pay or Vacate Notice and charging a late fee when rent is paid after the fifth of the month. This policy is applied consistently when the housing provider serves the same notice and bills the same fee to all tenants who pay after the fifth. However, what happens after the landlord serves the notices may vary by tenant, depending on the circumstances.

For example, if a tenant has been a long-term resident who has never paid late before and tenders the overdue rent immediately after receiving the 3-Day Notice, a landlord's decision to waive collecting the late fee would be reasonable under the circumstances. In contrast, a tenant who ignores a 3-Day Notice until receiving a summons and complaint may not merit the same consideration as a responsive long-term tenant.

In the financial services industry, fee waivers have been marketed and advertised to attract new customers. Remember the bank that advertised its policy of waiving one overdraft fee per year? Or the credit card company that waives one late fee per year? A neutral policy of waiving one late fee per year is an effective customer service tool that does not implicate fair housing laws. However, a landlord violates the fair housing laws if he or she selectively grants or denies late fees based on a tenant's protected class, including race, color, national origin, religion, gender (sex), disability, or familial status. Additional protected classes, depending on the jurisdiction, include marital status, sexual orientation, gender identity, age, military/veterans status, ancestry, and use of a Section 8 subsidy.

Late fees may also be waived in response to a reasonable accommodation request from a tenant with a disability. Fair housing laws require a housing provider to make needed accommodations, even if they constitute an exception to the usual rules, in order to enable a tenant with a disability to use and enjoy a dwelling. For example, a late fee might be waived at the request of a tenant with a disability who paid the rent late because of an unanticipated hospitalization. It's a good business practice to develop and implement a reasonable accommodation policy (for a sample policy on "Reasonable Accommodations and Modifications for People with Disabilities", see www.kingcounty.gov/exec/CivilRights/FH/FHresources.aspx).

As exciting as it is to hear that housing providers take fair housing compliance as seriously as they do, fair housing enforcement agencies also know that housing providers make exceptions in order to provide good customer service. When it comes to making exceptions:

- Put rules, policies, and fees in writing to ensure that all residents are aware of them.
- Analyze requests for exceptions on a case-by-case basis.
- Document the reasons for making or denying an exception.

So long as late fees are not granted or denied based on a resident's protected class, waiving a late fee to help out a long-term resident, as part of a marketing campaign, or as a reasonable accommodation, does not violate the fair housing laws.

If you are a housing provider who would like more information about fair housing, give the King County Office of Civil Rights a call at 206-296-7592 or visit our website at www.kingcounty.gov/civilrights.